

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PROOKLYN OFFICE

ROGER HELENESE,

Petitioner,

-against-

ERIC H. HOLDER, United States Attorney General,

Respondent.

X

12-CV-3167 (ARR)

NOT FOR ELECTRONIC
OR PRINT PUBLICATION

MEMORANDUM AND
ORDER

X

ROSS, United States District Judge:

Roger Helenese (“petitioner”), currently being held at the Buffalo Federal Detention Center, brings this pro se petition pursuant to, inter alia, 28 U.S.C. § 2241 seeking to vacate a final order of removal. For the reasons set forth below, the petition is dismissed.

DISCUSSION

On February 8, 2007, petitioner was convicted in Queens County Supreme Court of Unlawful Imprisonment in the First Degree, Criminal Possession of a Weapon in the Third Degree [Non-Violent Felony], and Criminal Possession of a Weapon in the Third Degree [Violent Felony]. Pet. ¶ 5. On February 27, 2007, petitioner was sentenced to concurrent prison terms of one-to-three years on the unlawful imprisonment charge, two-to-six years on the non-violent weapon charge, and six years on the violent weapon charge. Id. ¶ 6.

On April 22, 2010, petitioner was ordered removed from the United States by an immigration judge. Id. ¶ 7. On August 24, 2010, the United States Department of Justice Board of Immigration Appeals (“BIA”) affirmed the immigration judge’s decision. Id. On May 16, 2012, the United States Court of Appeals for the Second Circuit affirmed the final order of

removal and dismissed petitioner's appeal.¹ Id.; Helenese v. Holder, 12-1087 (2d Cir. 2012). On June 25, 2012, petitioner filed the instant action seeking, inter alia, to vacate the final order of removal.

DISCUSSION

This court does not have jurisdiction to grant petitioner the relief he seeks. Where, as here, a petitioner is subject to a final order of removal, the "sole and exclusive" method to obtain judicial review of that order is via petition to the appropriate circuit court of appeals. 8 U.S.C. § 1252(a)(5); see De Ping Wang v. Dep't of Homeland Sec., 484 F.3d 615, 615-16 (2d Cir. 2007) (noting that 8 U.S.C. § 1252 "strips district courts of jurisdiction to hear habeas petitions challenging final orders of deportation"). To the extent that petitioner seeks to have this Court stay the order of removal, the jurisdictional limits of § 1252(a) similarly prohibit any such action. See Royale v. INS, No. 10 CV 2105, 2010 U.S. Dist. LEXIS 56901, at *1 (E.D.N.Y. June 9, 2010) ("The provisions of § 1252 also strip district courts of jurisdiction to stay an order of deportation or removal."). Finally, to the extent petitioner asks this court to declare certain federal immigration statutes unconstitutional, there is no basis to do so. Moreover, because petitioner has already unsuccessfully availed himself of the Second Circuit's judicial review, the court finds that his petition should not be transferred to that court "in the interests of justice" pursuant to 28 U.S.C. § 1631. See id., at *3-4.

CONCLUSION

The petition is accordingly dismissed. Although petitioner paid the filing fee, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith. See Coppededge v. United States, 369 U.S. 438, 444-45 (1962).

¹ The petition incorrectly lists the date of the Second Circuit's decision as May 15, 2012.

SO ORDERED.

S/Judge Ross

Allyne R. Ross
United States District Judge

Dated: July 10, 2012
Brooklyn, New York

SERVICE LIST:

Plaintiff:

Roger Helenese
A079107718
Buffalo Federal Detention Center
4250 Federal Drive
Batavia, NY 14020